detska, supra. Thus the defense of illegality is not considered to be an equity in favor of the maker. By such a decision the clearly announced and accepted policy of the legislature that secular transactions shall not take place on Sunday is practically defeated. Where the transferee has paid no value there can be no possible counterbalancing policy requiring his protection.

CARRIERS — BILLS OF LADING — CONSTRUCTION OF "RESTRAINT OF PRINCES" IN A BILL OF LADING. — The captain of a German ship when in mid-ocean obeyed an order from the owners to return to New York on account of the declaration of war between Germany and the Entente Powers. The ship is libeled for non-delivery of a cargo billed to Plymouth and Cherbourg on a bill of lading which contained the usual "restraint of princes" exemption. The court found, as facts, that the captain acted under orders, and not in the use of his discretion as master; that, at the time, war was imminent, but was not actually declared until two days later; and that, if the ship had proceeded at its usual speed and without harbor delays it would have cleared the ports about thirteen hours before the declaration of war. *Held*, that the libellant may recover. *Guaranty Trust Co.* v. *Kronprinzessin Cecelie*, 56 N. Y. L. J. 915 (C. C. A., 1st Circ.).

It was apparently conceded in the case that no liability arises in favor of cargo owners, if the decision of a captain in an emergency turns out adversely to their interests. The liability in the principal case was predicated on the fact that the captain was acting on the owner's orders. But it seems probable that the conceded rule, as that of general average, is based on the idea that ship and cargo are a joint maritime enterprise. See HUGHES, ADMIRALTY, § 20. The individual interest is subordinate to that of the many. So it would seem justifiable to extend in law what the wireless has extended in fact, and allow a freedom from liability to follow the owner's discretion when circumstances make him the better judge. In any case, the "restraint of princes" exemption in the bill of lading should prevent recovery. Early cases lay down the rule that the restraint must be actual and operative, not merely expected and contingent. *Atkinson* v. *Ritchie*, 10 East 530, 531; *Hadkinson* v. *Robinson*, 3 Bos. & P. 388, 392; *King* v. *Delaware Ins. Co.*, 6 Cranch (U. S.) 71. But the modern law, pursuing a general tendency to construe contracts rationally rather than literally, has modified this rule, and it seems that a well-founded fear of restraint is sufficient. See ABBOTT, SHIPPING, 14 ed., 627; STEPHENS, BILLS OF LADING, 53. Thus, where a blockade has been established, the clause is held to cover this contingency even though there are chances for the ship to get through. *Geipel* v. *Smith*, L. R. 7 Q. B. 404, 409; *The Styria*, 101 Fed. 728, 731, aff'd 186 U. S. 1. *Cf. contra, Kacianoff* v. *China, etc. Co.*, [1913] 3 K. B. 407. Furthermore, even though no actual blockade has been established, a grave danger of capture is considered sufficient restraint to bring the case within the saving clause. *Nobel's Explosives Co.* v. *Jenkins & Co.*, [1896] 2 Q. B. 326, 331. But *cf. Matsui & Co.* v. *Watts, etc. Co.*, 114 L. T. R. (N. S.) 326. Even danger to shipping from mine fields is considered within the term "restraint of princes." *East Asiatic Co.* v. *S. S. Tronto Co.*, 31 T. L. R. 543. If a given condition creating reasonable risk of capture is within the clause, it would seem but just that likewise a reasonable risk of a condition which would result in capture should come within the clause.

CONFLICT OF LAWS — SHARES OF STOCK — JURISDICTION TO ADJUDICATE OWNERSHIP. — A resident of Tennessee died possessed of stock in a Kentucky corporation the certificates being in his possession. A Tennessee court granted letters of administration to the widow, and finding that the deceased was domiciled in Tennessee, decreed that the widow was entitled to the stock according to Tennessee law. The widow brought suit against the corporation in Kentucky to have the stock transferred to her on the books of the corpora-

tion. The mother of the deceased, who was not before the Tennessee court at the time of the decree, intervened, claiming that the domicil of the deceased was in Kentucky, and that by Kentucky law, she, as next of kin, should share with the widow. The widow claimed full faith and credit for the finding of the Tennessee court as to domicil. The Kentucky court refused full faith and credit on the grounds that the Tennessee court had no jurisdiction of the stock. The widow then prosecutes this writ of error. *Held*, that full faith and credit under the Constitution of the United States need not be extended to the finding of the Tennessee court. *Baker* v. *Baker, Eccles & Co.*, U. S. Sup. Ct., Oct. Term, 1916, No. 115.

For a further discussion of this case, see NOTES, p. 486.

CONSIDERATION — WHAT CONSTITUTES CONSIDERATION — CONTRACT TO SUPPLY INDEFINITE BUSINESS REQUIREMENTS. — By the terms of a contract, the defendant, a sugar manufacturer, agreed to sell, and the plaintiff, a wholesale grocer, agreed to buy, all of the plaintiff's "August requirements" of sugar at a fixed price. Upon a breach by the defendant, the plaintiff brings suit. *Held*, that the contract is void for lack of mutuality. *T. W. Jenkins & Co.* v. *Anaheim Sugar Co.*, 237 Fed. 278.

An agreement to supply a commodity merely as the buyer may desire is unenforceable for lack of consideration, since the buyer incurs no detriment. *American, etc. Co.* v. *Kirk*, 68 Fed. 791; *Teipel* v. *Meyer*, 106 Wis. 41, 81 N. W. 982. But if, as in the principal case, he agrees to buy from no one else, this limitation on his freedom of action furnishes sufficient consideration, although he may not be bound actually to buy from the seller. See 14 HARV. L. REV. 150. This is generally so in a contract to supply in such quantities as the buyer may desire for his business, or conversely, to buy as much of a product as the producer may desire to sell. *National Furnace Co.* v. *Keystone Mfg. Co.*, 110 Ill. 427; *Burgess, etc. Co.* v. *Broomfield*, 180 Mass. 283, 62 N. E. 367. Some courts, however, have erroneously taken the view that the obligation supporting the promise to sell is a corresponding promise to buy. To reach this result it was necessary to presume that the business was to continue, and hence that the buyer would buy, even if the market price fell. But in the principal case this presumption cannot be made, since the commodity supplied is not incidental to an established business, but is the entire subject of the business. Therefore if prices fall, the buyer may escape buying by ceasing to trade in the commodity. On this basis the court holds the contract void for lack of mutuality. Now the requirement of mutuality can properly mean only that a bilateral contract, to be enforceable, must be binding on both parties. This is so, if consideration is furnished by each party. But the theory of the principal case further requires that the obligations must be correlative — that if one party is bound to sell, the other must be bound to buy. This result is indefensible and adds an unwarranted technicality to the law of contracts. See *Jordan* v. *Indianapolis Water Co.*, 159 Ind. 337, 345–46, 64 N. E. 680, 683. Another recent federal case makes a sound application of the principles here involved. *Ramey Lumber Co.* v. *Schroeder Lumber Co.*, 237 Fed. 39.

CONSTITUTIONAL LAW — VALIDITY OF LAWS REGULATING THE SALES OF GOODS IN BULK. — The New York "Sales in Bulk Act" provides that the sale or transfer in bulk of any part or the whole of a stock of merchandise otherwise than in the ordinary course of trade shall be void as against the creditors of the seller or transferor unless certain formalities calculated to notify such creditors of the transaction are observed. LAWS, 1914, c. 507; PERSONAL PROPERTY LAW, § 44. The constitutionality of this statute was recently put in issue. *Held*, that the act is constitutional. *Klein* v. *Maravelas*, 56 N. Y. L. J. 1257 (Ct. of App.).